IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 1104 of 2007.

Date of Decision: 20th August, 2007.

Abhinav Verma .. Petitioner.

Versus

State of Himachal Pradesh and others .. Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.
The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr. Shrawan Dogra, Advocate.

For respondent No.1: Mr. M.S. Chandel, Advocate General, with Mr. J.K. Verma, Deputy Advocate General.

For respondent No.2 Mr. V.D. Khidtta, Advocate.

For respondent No.3: Mr. Ajay Mohan Goel, Advocate.

For respondent No.4: Mr. Onkar Jairath, Advocate.

V.K. Gupta, C.J. (Oral).

A detailed judgment was passed by a Division Bench of this Court on 1st June, 2006 in CWP No.432 of 2006 in which this Court had taken a very clear view that even though the category of Non-Resident Indians (NRIs) in the matter of admissions to professional colleges such as medical colleges and dental colleges has a clear nexus with the object sought to be achieved, viz. the integration of Non-Resident Indians living abroad into Indian mainstream and making available to them the facilities in existence in the Country of their origin, in so far as the category of "NRI sponsored candidates" is concerned, no such nexus could be said to be linked with any object sought to be achieved by creating such a category. By

[1] Whether the reporters of Local Papers may be allowed to see the judgment?

its very definition as well as in common parlance the category of "NRI sponsored candidates", comprises of only such persons who actually and physically are Indians residing in India. This categorization, therefore, of NRI sponsored candidates was declared by this Court to be impermissible under law. The following observations in the aforesaid judgment are apposite and we quote:

> "Reverting to the specific issue concerning the petitioner's prayer with respect to creation of the category of "NRI sponsored candidates", we do wish to point out and observe that the State has done well in obliterating and scrapping this category from the list of reserved categories as had been in vogue in the above mentioned academic Sessions in the past (for the years 2004-05 and 2005-06). Whereas it is quite understandable that the category of "NRI candidates" has a nexus with an object sought to be achieved, viz. the integration of non-resident Indians living abroad into Indian mainstream and making available to them the facilities in existence in the Country of their origin, no such nexus can be said to be linked with any object sought to be achieved, with respect to a so–called category such as "NRI sponsored candidates" because by its very definition as well as in common parlance, this category, in effect and substance means and includes only such candidates who are actually and ordinarily residing in India (who are not in any case non-resident Indians living abroad) but who would be financially sponsored by non-resident Indians in the matter of their admissions. In effect and substance, creating such a category and granting admissions to the candidates belonging to such category would amount to selling admissions on commercial basis, pure and simple, by practicing patent discrimination against other ordinarily resident Indians who would be selected only on the basis of merit and who would not be in a position to obtain sponsorships from NRIs, meaning in other words who would not be in a position to arrange huge funds for admissions."

The distinction between NRI candidates and NRI sponsored candidates is quite clear. There is no vagueness in so far as definition as well as description of these two categories are concerned. Whereas NRI candidates are such persons who do not reside in India and who are Non-Resident Indians (residing abroad), NRI sponsored candidates are such Indians who do not reside abroad, but actually and physically reside in India, and who, for the purposes of their admissions have been or might be sponsored by NRIs. The sponsorship of course, as everyone understands, is limited only with respect to the funding of their admissions.

In the case of **P.A.Inamdar and others** vs. **State of Maharashtra and others,** 2005(6) SCC 537 dealing with the aforesaid aspect, their Lordships of the Hon'ble Supreme Court observed and held as under:

> "Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ("NRI" for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In fact, the term "NRI" in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which

> they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate."

This Court, therefore, in the aforesaid judgment dated 1st June, 2006 had clearly, un-ambiguously and in no uncertain terms had mandated that it was not open to the State Government to create a category of NRI sponsored candidates because in the considered opinion of this Court doing so would mean, in effect and substance selling admissions on commercial basis, pure and simple by practicing patent discrimination against other Indian nationals who would be selected only on the basis of their merit and would not be in a position to obtain sponsorships from NRIs for the purpose of funding their admissions by receiving finances from abroad.

We are pained to observe that the aforesaid judgment of this Court has been observed in total breach by the respondents. In flagrant violation of the ratio as well as the mandate contained in the aforesaid judgment of this Court, respondents No. 1 & 2 proceeded to create a category of candidates which actually was a step even beyond the NRI sponsored candidates. In a blatant act of total violation and disobedience of the judgment of this Court, respondents No. 1 & 2 went whole hog in creating a situation whereby by creating a category of Ordinary Indians under the cloak

of NRI candidates it simply created a devious mechanism of selling seats on commercial basis, that too perhaps in a clandestine manner. Let us notice the facts now.

The Himachal Pradesh University, Shimla issued prospectus for HP CPMT, Session 2007-2008 for Pre-Medical Entrance Test for admission into MBBS/BDS courses in Himachal Pradesh. Two seats each were reserved in Indira Gandhi Medical College, Shimla and Doctor Rajindra Prasad Government Medical College, Tanda, against the category of NRI seats. In para 9 of the prospectus, three types of NRI categories were created as well as defined and described. Para 9 reads thus:

> **"There will be three types of NRI categories as follows:**
>
> i) First preference will be given to foreign students and they will not appear in the examination. However, they will give preference of colleges. They will apply to the concerned Principals.
>
> ii) Second preference will be given to those candidates who are sponsored NRI, sponsorship letter to be attached with the application.
>
> iii) Third preference will be given to those candidates who are not NRI but willing to pay as equal amount of fee in Indian currency.
>
> The NRI of second and third categories will compete in the HPCPMT alongwith other candidates. Their merit will be drawn in their own categories. They will submit their Application Form-B to the University directly. Those who are eligible and compete for HPCPMT-2007 will be eligible to compete for (ii) & (iii) categories of NRI."

Undoubtedly, categories (ii) & (iii) in para 9 (supra) by themselves ran patently counter to the definition of "NRI students" as occurring in clause (viii) of para 13 of the Prospectus, which reads thus:

> "(viii) **NRI students** means wards of Indian citizen residing abroad and who have passed the qualifying examinations from abroad."

It is stated before us that respondents No. 3 & 4 applied for admission in the MBBS course in the general category as well as in the category of NRI sponsored candidates as has been defined in para 9 (supra) even though there is some confusion whether their applications in the later category would come under the purview of para 9(ii) or para 9(iii). It is totally immaterial because notwithstanding the sub-categorization of their applications, by the very nature of their status they could be termed as falling only in para 9(iii) and in no other category. The petitioner also applied for admission but as a general category candidate. As per the merit position, based upon the entrance examination, whereas petitioner having obtained 599 marks was placed at Sr. No. 73 in order of merit, respondent No. 3 having obtained 431 marks and respondent No. 4 having obtained 489 marks were placed at Sr. No. 630 and 365, respectively in order of merit.

Ultimately, it was decided to grant admissions to respondents No. 3 & 4 in the NRI category, treating them as belonging to para 9 (ii) and (iii) supra.

Apart from the fact that the aforesaid action of respondents No. 1 & 2 clearly tentamounts to violating and breaching the judgment of this Court dated 1st June, 2006, passed in CWP No. 432 of 2006 which having assumed finality in law was binding upon respondents No. 1 & 2 and everyone else in the State of Himachal Pradesh, by creating the aforesaid category of so called NRI sponsored candidates, respondents No. 1 & 2 have violated the mandate contained in the Supreme Court judgment in the case of **P.A.Inamdar and others** vs. **State of Maharashtra and others** (supra) as well as Article 14 of the Constitution of India because the merit in the entrance test has been given a complete go bye and seats have been sold on commercial basis to such students who were, pure and simple, ordinary, resident Indians residing in India and who had no link or connection with NRIs except perhaps that their relations were residing abroad who also might have

financed their admissions in India. Actually, we are not sure about the source of funding also. The fact remains that two seats in MBBS course in the Medical Colleges of Himachal Pradesh, both the Colleges belonging to the State Government were allotted purely on commercial basis even though a large number of candidates superior and higher in merit than respondents No. 3 & 4 could not be admitted only because perhaps they could not afford to pay the exorbitant amount which respondents No. 3 & 4 were and are ready and willing to pay.

Under the cloak of either “NRI candidates” or “NRI sponsored candidates”, a devious method has been adopted for granting admission to normal, ordinarily residing Indians on payment of charges being equivalent to and which are fixed and prescribed for NRI students. Normal ordinarily resident Indians cannot be equated with NRI students who constitute a different category altogether and who deserve to be treated differently.

The aforesaid action of respondents No. 1 & 2 is patently un-constitutional as well as illegal, violating the judgment of this Court, the mandate of the Supreme Court in the case of **P.A. Inam Dass** vs. **State of Maharashtra** (supra), as well as Article 14 of the Constitution of India. This action of respondents No. 1 & 2 accordingly is quashed and set aside with all consequences with a clear and binding direction upon respondents No. 1 & 2 to be absolutely careful in future while drawing up the list of categories for admission in the Colleges.

Admissions granted to respondents No. 3 & 4 accordingly are hereby quashed and set aside with all consequences.

Because respondents No. 1 & 2 have acted in the manner as above mentioned despite a clear verdict of this Court having already been announced as early as on 1st June, 2006 and because the petitioner has been driven to this unnecessary and avoidable litigation, the respondents are

burdened with costs of Rs.50,000/- to be paid to the petitioner in two weeks from today.

As a consequence of this judgment, two seats now falling vacant shall be filled up by respondents No. 1 & 2 in accordance with existing law on the subject and admissions shall be granted to candidates strictly in order of merit.

CMP No. 1841 of 2007

In view of the disposal of main petition, this application is also disposed of and interim order dated 25.7.2007 is vacated.

(V.K. Gupta), C.J.

August 20, 2007
(rc)

(Rajiv Sharma), J.